SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 746

MITCHELL, SECRETARY OF LABOR, PETITIONER,

vs.

ROBERT DeMARIO JEWELRY, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

INDEX

A (Omitted in printing)

IN UNITED STATES OF AMERICA,
UNITED STATES COURT OF APPEALS
FIFTH JUDICIAL CIRCUIT

PLEAS AND PROCEEDINGS had and done at a regular term of the United States Court of Appeals for the Fifth Circuit, begun on the first Monday in October, A. D., 1958, before the Honorable Joseph C. Hutcheson, Jr., Chief Judge, the Honorable Elbert P. Tuttle and the Honorable Warren L. Jones, Circuit Judges:

JAMES P. MITCHELL, Secretary of Labor, United States Department of Labor, *Appellant & Cross-Appellee,*

versus

ROBERT DEMARIO JEWELRY, INC., and ROBERT DEMARIO, an individual, *Appellees & Cross-Appellants.*

(And reverse title)

BE IT REMEMBERED, That heretofore, to-wit on the 24th day of January, A. D., 1958, a transcript of the record in the above styled cause, pursuant to an appeal and cross-appeal from the United States District Court for the Middle District of Georgia, was filed in the office of the Clerk of the said United States Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Court of Appeals as No. 17068, as follows, to-wit:—

B (File endorsement omitted)

1 IN UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

Civil Action No. 667

JAMES P. MITCHELL, Secretary of Labor, United States Department of Labor, *Plaintiff*

v.

ROBERT DEMARIO JEWELRY, INC., A Corporation and ROBERT DEMARIO, an Individual, *Defendants*

Complaint—Filed May 17, 1957

I

Plaintiff brings this action to enjoin the defendants from violating the provisions of Section 15 (a) (3) of the Fair Labor Standards Act of 1938 (Act of June 25, 1938, c. 676, 52 Stat. 1060, U. S. C. Title 29, Sec. 201, *et seq.*), hereinafter referred to as the Act.

II

Jurisdiction of this action is conferred upon the court by Section 17 of the Act.

III

Defendant Robert DeMario Jewelry, Inc., is now, and at all times hereinafter mentioned was, a corporation organized and existing under and by virtue of the laws of the State of Georgia with an office and principal place of business at Fort Gaines, Georgia, within the jurisdiction of this court. The defendant Robert DeMario is a resident of Fort Gaines, Georgia, within the jurisdiction of this court.

2 IV

The defendant Robert DeMario is now and has been an officer of the defendant Robert DeMario Jewelry, Inc., owning 98% of its stock and at all times hereinafter alleged supervised, directed and controlled the employees of said corporation and acted directly in the interest of said corporate defendant in relation to its employees and was at

all times alleged in this complaint an employer within the meaning of the Act.

V

Defendants, during the times hereinafter mentioned, were engaged in the manufacture, sale and distribution of costume jewelry at Fort Gaines, Georgia. Substantial amounts of said goods have been, and are being, produced for commerce within the meaning of the Act, and have, and are being sold, shipped, delivered, transported and offered for transportation from defendants' said place of business to other States.

VI

(a) At all times hereinafter mentioned the defendants employed Elizabeth Dukes in and about their said place of business in Fort Gaines, Georgia, in the production of goods, to-wit, costume jewelry, for commerce within the meaning of the Act.

(b) Heretofore, on or about the 2nd day of November, 1956, the said Elizabeth Dukes requested in writing that the Secretary of Labor, United States Department of Labor, represent her in a claim for back wages against Robert DeMario Jewelry, and on the 14th day of November, 1956, the plaintiff herein instituted action pursuant to said request by virtue of the authority contained in Section 16 (c) of the Act. Thereafter, the defendants unlawfully pursued a course of discrimination against the said Elizabeth Dukes and on or about the 30th day of November, 1956, did discharge her from their employment because the said employee had filed said request and complaint and caused to be instituted the action heretofore alleged, and the defendants have failed, and continue to fail, to employ the said employee herein named. By discriminating against and discharging the said Elizabeth Dukes, as aforesaid, and continuing to fail to employ her, the defendants have violated, and continue to violate, Section 15 (a) (3) of the Act.

3

VII

(a) At all times hereinafter mentioned the defendants employed Maebelle Giles in and about their said place of

business in Fort Gaines, Georgia, in the production of goods, to-wit, costume jewelry, for commerce within the meaning of the Act.

(b) Heretofore, on or about the 6th day of November, 1956, the said Maebelle Giles requested in writing that the Secretary of Labor, United States Department of Labor, represent her in a claim for back wages against Robert DeMario Jewelry, and shortly thereafter said defendants learned of the submission of said request and thereupon unlawfully embarked upon a course of discrimination against the said Maebelle Giles and on or about the 27th day of November, 1956, did discharge her from their employment because the said employee had filed said request and complaint, and the defendants have failed, and continue to fail, to employ the said employee herein named. By discriminating against and discharging the said Maebelle Giles, as aforesaid, and continuing to fail to employ her, the defendants have violated and continue to violate Section 15 (a) (3) of the Act.

VIII

(a) At all times hereinafter mentioned the defendants employed Paralee Pate in and about their said place of business in Fort Gaines, Georgia, in the production of goods, to-wit, costume jewelry, for commerce within the meaning of the Act.

(b) Heretofore, on or about the 2d day of November, 1956, the said Paralee Pate requested in writing that the Secretary of Labor, United States Department of Labor, represent her in a claim for back wages against Robert DeMario Jewelry, and on the 14th day of November, 1956, the plaintiff herein instituted action pursuant to said request by virtue of the authority contained in Section 16 (c) of the Act. Thereafter, the defendants unlawfully pursued a course of discrimination against the said Paralee Pate and on or about the 20th day of November,
4 1956, did discharge her from their employment because the said employee had filed said request and complaint and caused to be instituted the action heretofore alleged, and the defendants have failed, and continue to fail, to employ the said employee herein named. By

discriminating against and discharging the said Paralee Pate, as aforesaid, and continuing to fail to employ her, the defendants have violated, and continue to violate, Section 15 (a) (3) of the Act.

IX

A judgment enjoining and restraining the violations hereinabove alleged is specifically authorized by Section 17 of the Act.

WHEREFORE, cause having been shown, plaintiff prays for judgment permanently enjoining and restraining defendants, their officers, agents, servants, employees and attorneys and all persons acting, or claiming to act, in their behalf and interest, from violating the provisions of Section 15 (a) (3) of the Act, and requiring the defendants further, in good faith, to offer reinstatement in their employment to Elizabeth Dukes, Maebelle Giles, and Paralee Pate and, upon their acceptance, to reinstate them in said employment at rates and under conditions not less favorable to them than prevailed prior to said course of discrimination and their unlawful discharge, and, further, to reimburse the said Elizabeth Dukes, Maebelle Giles, and Paralee Pate in sums equal to the wages lost by them by virtue of said unlawful discharges, and for such further relief as may be necessary and appropriate.

[Signed] STUART ROTHMAN,
Solicitor.

[Signed] BEVERLY R. WORRELL,
Regional Attorney.

[Signed] M. J. PARMENTER,
Attorney.

UNITED STATES DEPARTMENT
OF LABOR,
Attorneys for Plaintiff.

5 Post Office Address:

U. S. Department of Labor, Office of the Solicitor, 1401 South 20th Street, Birmingham 5, Alabama.

U. S. Department of Labor, Office of the Solicitor, 654 Peachtree—Seventh Building, Atlanta 23, Georgia.

IN UNITED STATES DISTRICT COURT

Answer of Defendants

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1. Defendants admit that plaintiff brings this action but denies any violation as alleged in the complaint.

2. Defendants admit Paragraph II.

3. Defendants admit Paragraph III.

4. Defendants deny Paragraph IV, but admit that Robert DeMario is, and has been since its creation, an officer of defendant corporation, at said times owning 98% of said stock, and that he directed and controlled the employees of said corporation in his capacity as an officer of said corporation.

5. Defendants deny Paragraph V, except to admit that defendant corporation, at the times mentioned in the complaint was engaged in the manufacture of goods being produced for commerce.

6. Defendants deny Paragraph VI, except as follows:

(a) Defendants admit that defendant corporation at one time employed the said Elizabeth Dukes in its place of business in Fort Gaines, Georgia in the production of goods for commerce.

(b) Defendants admit that on or about November 14, 1956 the plaintiff instituted an action on behalf of said Dukes against these defendants.

(c) Defendants can neither admit nor deny, for want of sufficient information, the allegation in the first sentence of Paragraph VI (b) regarding the alleged written request made by said Elizabeth Dukes to the Secretary of Labor.

7. Defendants deny Paragraph VII of the complaint, except as follows:

6 (a) Defendants admit that defendant corporation at one time employed Maebelle Giles in its place of business in Fort Gaines, Georgia in the production of goods for commerce.

(b) Defendants can neither admit nor deny, for want of sufficient information, the allegation in Paragraph VII (b)

regarding a written request made by said Maebelle Giles to the Secretary of Labor.

8. Defendants deny Paragraph VIII, except as follows:

(a) Defendants admit that defendant corporation at one time employed Paralee Pate in its place of business in Fort Gaines, Georgia in the production of goods for commerce.

(b) Defendants can neither admit nor deny the allegation in Paragraph VIII (b) regarding the written request made by Paralee Pate to the Secretary of Labor.

(c) Defendants admit that on or about November 14, 1956 the plaintiff instituted an action on behalf of the said Paralee Pate against these defendants.

9. Defendants deny Paragraph IX.

WHEREFORE, defendants demand trial by Jury and pray judgment.

STONE & STONE,*
MOORE, GIBSON, DELOACHE & GARDNER,
[Signed] R. LAMAR MOORE,
of Counsel.
Attorneys for Robert DeMario and Robert DeMario Jewelry, Inc., defendants.

P. O. Addresses:

*Blakely, Georgia.
P. O. Box 190, Moultrie, Georgia.
P. O. Box 190, Moultrie, Georgia.

IN UNITED STATES DISTRICT COURT

Findings, Conclusions and Decree—October 8, 1957

BOOTLE, District Judge:

This is an action brought under the authority of Section 17 of the Fair Labor Standards Act, 29 U. S. C. A.
7 217, to enjoin the defendants from violating the provisions of Section 15 (a) (3) of that act, (Title 29, U. S. C. A. 215 (a) (3)), alleging the unlawful discharge

of Elizabeth Duke, Maebelle Giles, and Paralee Pate, praying for an injunction and an order requiring their reinstatement and reimbursement for wages lost by them by virture of their unlawful discharge.

Findings of Fact

I find the facts to be as follows:

1. Robert DeMario Jewelry, Inc., the corporate defendant, is engaged in the business of manufacturing jewelry at Fort Gaines, Georgia, and has been continuously so engaged since its incorporation on September 19th, 1955. The defendant, Robert DeMario, is president of said corporation and the owner of 98% of its capital stock and in his individual capacity operated the same business at Fort Gaines, Georgia continuously from the month of August, 1953 until the business was incorporated.

2. Elizabeth Duke was an employee of said business continuously for three years and one month immediately prior to November 30th, 1956, when she was laid off. Maebelle Giles was an employee of said business continuously for two years and one month immediately prior to November 20th, 1956, when she was laid off. Paralee Pate was an employee of said business continuously for nine months immediately prior to November 19th, 1956, when her employment was terminated in the manner hereinafter specified.

3. On November 14th, 1956, a number of employees of the corporate defendant, including Elizabeth Duke and Palalee Pate, through the Secretary of Labor, filed a suit in this court against the defendants under and by virtue of the authority of Section 16 (c) of the Fair Labor Standards Act, Title 29, U.S.C.A. 216 (c), for recovery of wages allegedly unpaid. Said suit was served upon the defendants on November 16th, 1956. Maebelle Giles was not named in that action, but was included in a subsequent like suit filed in this court on January 7th, 1957, and Larry Brown, one of the officers of the corporate defendant, learned on November 16th, 1956, when the first
8 suit was served, that Maebelle Giles had filed a request with the Secretary of Labor to represent her in her claim for back wages.

4. Immediately after the service of said suit upon Robert DeMario he became disturbed, excited and displeased with the three employees named because of their having authorized the bringing of said suit. One by one he called them into the restroom in the place of business which was the only available private area for conference in that immediate building and, in substance, asked them why they had authorized the bringing of the suit and protested their having done so.

5. The three employees named were, relatively speaking, long-term employees of the defendants, particularly Elizabeth Duke and Maebelle Giles. Few, if any, employees had worked continuously longer than these two.

6. Because of the defendants' displeasure over the filing of said first mentioned suit and the probability of the filing of said second suit the defendants immediately began discriminating against the three named employees. This discrimination manifested itself in several ways including the changing of seating arrangements of these employees on the following Monday morning, November 19th, giving them less desirable locations or positions in the plant, changing the particular type of work assigned to them, giving instructions that they were not to leave their seats except to go to the restroom and generally finding fault with their work.

7. As a result of said discrimination and nagging on the part of the individual defendant, Paralee Pate, about twelve o'clock, noon, on Monday, November 19th, stated to the individual defendant, "I am leaving and I think you know why". She returned to work at the usual hour next morning, but the defendants refused to admit her to the plant, the individual defendant telling her, in substance, that she had quit the day before.

8. On or about November 28th, 1956, the defendants laid off Maebelle Giles and on or about November 30th, 1956 laid off Elizabeth Duke. At least the defendants told these two employees they were laid off, but they have never been offered reinstatement or re-employment. E. B. Tall-
9 madge, an investigator with the Wage and Hour Division, United State Department of Labor, before

the present action was filed, requested the defendants to reinstate Elizabeth Duke, but the defendants did not agree to do so. The evidence is not entirely clear whether Mr. Tallmadge also requested reinstatement of the other two named employees, the individual defendant having testified that he might have done so. As above stated, Paralee Pate requested the privilege of returning to work the day after her employment was interrupted at noon, but defendants rejected her request.

9. Paralee Pate and Maebelle Giles were at least average workers and Elizabeth Duke was above the average. No complaints had ever been made against the work of any of these three employees. All three of these employees were well liked by the other employees and throughout the trial no serious criticism was made of any of them except that Paralee Pate could be sarcastic toward the individual defendant and another supervisor because of which trait her name had been included on a tentative list prepared prior to November 16th, 1956 of persons who were to be laid off, but after a conference between the individual defendant and some of his key personnel prior to the filing of any of the suits, her name was removed from said list. The names of Maebelle Giles and Elizabeth Duke had never been included on said list.

10. The three named employees would not have been laid off if it had not been for the filing of said suits, or if they had been laid off they would have been reinstated long since. A few other employees were laid off during the months of October, November, and December, 1956, several of those being laid off having less seniority than the three employees named, and some, at least three, of those laid off with less seniority having been re-employed by the defendants.

Conclusions of Law

I arrive at the following conclusions of law:

1. This Court has jurisdiction of this cause. Title 29, U.S.C.A. Section 217.

2. It is unlawful for any person to discharge or in any other manner discriminate against any employee because such employee has filed any complaint, or

instituted, or caused to be instituted, any proceeding under or related to the Fair Labor Standards Act (Title 29, U. S. C. A. Section 215 (a) (3)).

3. The conduct of the defendants as described in the foregoing findings of fact constituted prohibited discrimination against the three employees named as to the treatment of said employees between November 16th, 1956 and the respective dates of the suspension of termination of their employment, as to the suspension or termination of their employment and as to the failure to reinstate or re-employ said employees.

4. The plaintiff in this case, James P. Mitchell, Secretary of Labor, suing on behalf of said three named employees, is entitled to an injunction enjoining the defendants from in any manner discriminating against said three employees and is entitled to a mandatory injunction requiring the defendants to offer said employees reinstatement to the former positions which they held immediately prior to the service of the suit which was served on or about November 16, 1956, which injunction should order the defendants, if need be, to lay off any employees enjoying less seniority than said three employees, seniority to be computed from the date of original employment in each instance. While such injunctions should not issue except in cases where evidence of discrimination is clear and convincing, this case clearly falls in that category. *Walling, Administrator* v. *O'Grady*, 2nd Cir., 146 F. 2d 422; *McComb* v. *Frank Scerbo & Sons*, 2nd Cir., 177 F. 2d 137; *Texas & N.O.R. Co.* v. *Brotherhood Ry. & S. S. Clerks*, 281 U.S. 548, 74 L. Ed. 1034, 1039; *Porter* v. *Warner Holding Company*, 328 U.S. 395, 90 L. Ed. 1332; *Walling* v. *Barnesville Farmers Elevator Co.*, 58 F. Supp. 821, D. C. Minnesota, and *Walling* v. *Phillips & Buttorff Mfg. Co.*; 57 F. Supp. 543, D.C.M.D. Tenn.

5. In this case it is not necessary to determine whether this Court has jurisdiction, in view of the proviso contained in Title 29, U.S.C.A. Sec. 217, reading:

> *Provided*, That no court shall have jurisdiction, in any action brought by the Secretary of Labor to restrain such violations, to order the payment to em-

ployee of unpaid minumum wages or unpaid over-
11 time compensation or an additional equal amount as liquidated damages in such action.

to require reimbursement for wages lost by virtue of unlawful lay-offs or discharges inasmuch as in the exercise of the Court's discretion such reimbursement would not be ordered even assuming, without deciding, that the Court would have jurisdiction to order such reimbursement. As to whether or not such jurisdiction exists, see U. S. Code Congressional Service, 81st Congress, First Session, 1949, page 2272 for legislative history of said proviso.

Decree

Whereupon, it is Considered, Ordered, Adjudged, and Decreed as follows:

1. The defendants, Robert DeMario Jewelry, Inc. and Robert DeMario, their officers, agents and employees are hereby permanently enjoined from hereafter discharging, laying off or in any other manner discriminating against Elizabeth Duke, Maebelle Giles and Paralee Pate because of their having instituted or caused to be instituted, any of the litigation referred to in the findings of fact in this case.

2. Said defendants, Robert DeMario Jewelry, Inc. and Robert DeMario are hereby ordered, by and through this mandatory injunction, to offer to said three named employees, Elizabeth Duke, Maebelle Giles and Paralee Pate, reinstatement to their former positions which were held by them immediately prior to the service of said suit, which service took place on or about November 16th, 1956. The defendants are ordered, if need be in order to effect said reinstatement, to lay off any employee or employees having less seniority than Elizabeth Duke, Maebelle Giles and Paralee Pate, seniority in each instance to be measured from date or original employment. Said offers of reinstatement shall be in writing in letter form to be addressed and delivered to said three named employees within ten days from the date hereof, and said employees shall then be allowed a period of ten days within which to accept or reject said offers of reinstatement, and in the event of acceptance by said employees each of them so accepting shall, barring sickness or other unavoidable circumstances,

12 be ready and offer to report for work within ten days from the date of receipt by such employee of said offer of reinstatement. Said defendants are ordered to mail to the Clerk of this Court at Macon, Georgia a copy of said offers of reinstatement and said employees are ordered to mail to said Clerk copies of their letters of acceptance or rejection, and said defendants and employees are ordered, separately, to advise the Clerk of this Court in writing at the expiration of the second ten day period above specified whether or not each such employee has been reinstated and if not, why not, which reports, of course, may be prepared and submitted by attorneys for the respective parties.

3. The prayers of the petition with respect to ordering reimbursement for wages lost by virtue of unlawful lay-offs or discharges are hereby denied.

4. This Court retains jurisdiction of this cause for the purpose of passing any and all additional orders herein as may, in its judgment, become necessary, for the purpose of modifying the same, if, in its judgment, modification becomes necessary and for the purpose of enforcing the same.

The costs in this case will be taxed and assessed by the Clerk against the defendants.

This 8th day of October, 1957.

[Signed] W. A. BOOTLE,
United States District Judge.

13 Clerk's Certificate to foregoing transcript omitted in printing.

Designation of Record for Printing by Appellant and Cross-Appellee—Filed February 4, 1958

(Omitted in printing)

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15 **Minute Entry of Argument and Submission—October 6, 1958**

(Omitted in printing)

14

16 IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17068

JAMES P. MITCHELL, Secretary of Labor, United States Department of Labor, *Appellant and Cross-Appellee*,

versus

ROBERT DEMARIO JEWELRY, INC. and ROBERT DEMARIO, an Individual, *Appellees and Cross-Appellants*,

(AND REVERSE TITLE.)

Appeal and Cross-Appeal from the United States District Court for the Middle District of Georgia.

Opinion—November 7, 1958

Before HUTCHESON, Chief Judge, and TUTTLE and JONES, Circuit Judges.

JONES, Circuit Judge: The Secretary of Labor brought suit in the United States District Court for the
17 Middle District of Georgia, invoking the jurisdiction conferred by Section 17 of the Fair Labor Standards Act,[1] against Robert DeMario Jewelry, Inc., a corporation,

[1] "The district courts, together with the District Court for the Territory of Alaska, the United States District Court for the District of the Canal Zone, and the District Court of the Virgin Islands, shall have jurisdiction, for cause shown, to restrain violations of section 15; *Provided*, that no court shall have jurisdiction in any action brought by the Secretary of Labor to restrain such violations to order the payment to employees of unpaid minimum wages or unpaid overtime compensation or an additional equal amount as liquidated damages in such action." 29 U.S.C.A. § 217.

and Robert DeMario who controlled the corporation and owned most of its stock. It was charged by the Secretary that three employees of the jewelry company had been wrongfully discharged in violation of Section 15 of the Act[2] for having complained to the Secretary that they were not receiving minimum wages. In addition to seeking an injunction, in general terms, against violations of Section 15(a)(3) of the Act, the Secretary prayed that the appellees be required to reinstate the three discharged employees and to reimburse them for wages lost as a result of the wrongful discharges.

The district court entered its decree ordering the reinstatement of the three discharged employees. The district judge indicated a doubt as to whether the court had any power to decree reimbursement for lost wages
18 but found it unnecessary to determine this question "inasmuch as in the exercise of the Court's discretion such would not be ordered even assuming, without deciding, that the Court would have jurisdiction to order such reimbursement." The Secretary has appealed and urges that the district court erred in refusing to direct the appellees to make reimbursement to the employees for wages lost as a result of their wrongful discharge. The Secretary designated for printing only those portions of the record consisting of the Compaint, the Answer, and the Findings of Fact, Conclusions of Law and Decree. The appellees, saying that the record on appeal is not sufficient to permit a determination of whether there was an abuse of discretion in denying reimbursement, move that the appeal be dismissed.

The printed record is sufficient for our disposition of the case. If the appellees believed that the portion which the appellant designated for printing was inadequate, the rules

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[2] "(a) After the expiration of one hundred and twenty days from June 25, 1938, it shall be unlawful for any person—

* * * * *

(3) To discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee; * * *" 49 U.S.C.A. § 215.

of this Court provide the method by which other portions of the record may be included. 5th Cir. Rule 23.

Section 17 of the Fair Labor Standards Act, as originally enacted, merely conferred jurisdiction upon the district courts to restrain violations of Section 15 of the Act. The limiting proviso was not then a part of the statute. The Eighth Circuit Court of Appeals sustained a consent decree in a suit by the Wage and Hour Administrator directing payment to employees of the defendant of the difference between wages paid and the amount payable at the prescribed minimum hourly and overtime rates. *Walling* v. *Miller*, 8th Cir. 1943, 138 F. 2d 629, cert. den. 321 U. S. 784, 64 S. Ct. 781, 88 L. Ed. 1076. Doubt was expressed as to the authority of the administrator to maintain the suit, but it was found unnecessary to decide the question. One of the judges, in an opinion concurring specially, expressed the opinion that the power given to district courts to restrain violations included the power to direct payments of wage deficiencies unlawfully withheld. Thereafter it was held by the Second Circuit Court of Appeals that in a proceeding brought under Section 17 for the reinstatement of wrongfully discharged employees the court had inherent power to enforce payment of wages lost by the discharge. *Walling* v. *O'Grady*, 2nd Cir. 1944, 146 F. 2d 422. In support of its decision the court cited and relied upon *Texas & N.O.R. Co.* v. *Brotherhood of Ry. Clerks*, 281 U. S. 548, 50 S. Ct. 427, 74 L. Ed. 1034; *Phelps Dodge Corporation* v. *N.L.R.B.*, 313 U. S. 177; 61 S. Ct. 845, 85 L. Ed. 1271, 133 A.L.R. 1217; and the specially concurring opinion in *Walling* v. *Miller*, *supra*.

19

The O'Grady case was followed in the Second Circuit by *McComb* v. *Frank Scerbo & Sons*, 2nd Cir. 1949, 177 F. 2d 137, in which it was held that the district courts had power, in a suit to restrain violations of the minimum wage and hour provisions of the Act, to order restitution of overtime wages. In the opinion of the court it followed, and it recited in its opinion that it was following, its O'Grady case. It quoted from the special concurrence in *Walling* v. *Miller*, *supra*. The authorities relied upon in the O'Grady case were cited and also the intervening decision in *McComb* v. *Jacksonville Paper Co.*, 336 U. S. 187, 69 S. Ct. 497, 93 L. Ed. 599. Cf. *Brotherhood of Ry.*

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& S.S. Clerks v. *Texas & N.O.R. Co.*, 25 F. 2d 876, affirmed 33 F. 2d 13. The Texas & N.O.R. case and *McComb* v. *Jacksonville Paper Co.* case involved situations where prior decrees, framed to act prospectively, had not been complied with and contempt proceedings had thereafter been instituted. In the *McComb* v. *Jacksonville Paper Co.* opinion it was said "We can lay to one side the question whether the Administrator, when suing to restrain violations of the Act, is entitled to a decree of restitution for unpaid wages." It is hornbook law that in a contempt proceedings for the violation of an injunction the court may ascertain damages for the breach and enter judgment for such damages. 12 Am. Jur. 430-432, Contempt § 62. The power of Federal courts to enforce decrees and punish by contempt for their breach is expressly recognized in Rule 70, Fed. Rules Civ. Proc., 28 U. S. C. A. Cf. *National Drying Machinery Co.* v. *Ackoff*, 3rd Cir. 1957, 245 F. 2d 192, cert. den. 355 U. S. 832, 78 S. Ct. 47, 2 L. Ed. 2d 44; *Phelps Dodge Corp.* v. *N.L.R.B.* involved the provision of the National Labor Relations Act, 29 U.S.C.A. § 160(c), authorizing the Labor Board, under the circumstances stated by the Congress, "to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of" that Act. No such power is conferred on the courts by Section 17 of the Fair Labor Standards Act.

By the Fair Labor Standards Amendments of 1949, 63 Stat. 910, 920, Section 17 was amended by adding the proviso,

> "That no court shall have jurisdiction, in any action brought by the Administrator [Secretary of Labor] to restrain such violations, to order the payment to employees of unpaid minimum wages or unpaid overtime compensation or an additional equal amount as liquidated damages in such action."

For the Secretary the inference is drawn that this amendment recognizes the power of district courts to order restitution in an injunction decree ordering reinstatement of wrongfully discharged employees. For the jewelry company employer it is said that the amendment negatives any such inference and, on the contrary, shows a Congres-

sional recognition of the non-existence of such power as is claimed by the Secretary for the courts. The Conference Committee, in its report, discussed the purposes and effect of the amendment to Section 17.[3] In the drafting of the 1949 Act there was included as Section 16(c) the provision that, with the exceptions stated, the Administrator, now the Secretary, could sue with the consent of the employees for unpaid minimum wages and unpaid overtime compensation. Thus was created a cause of action in the Secretary. Suits by him under the statute are in effect, suits by the United States. *Walling* v. *Norfolk Southern Ry. Co.*, 4th Cir. 1947, 162 F. 2d 95, *Walling* v. *Frank Adam Electric Co.*, 8th Cir. 1947, 163 F. 2d 277;

[3] "The House bill adopted the language of section 17 of the act without change. The Senate amendment altered this section to include a more precise description of the United States courts having jurisdiction of actions to restrain violations. The legal effect of both versions was the same. The conference agreement adopts the Senate version with a proviso to the effect that no court shall have jurisdiction, in any action brought by the Administrator to restrain violations of section 15, to order payment to employees of unpaid minimum wages or unpaid overtime compensation or an additional equal amount as liquidated damages. This proviso has been inserted in Section 17 of the act in view of the provision of the conference agreement contained in section 16(c) of the act which authorizes the Administrator in certain cases to bring suits for damages for unpaid minimum wages and overtime compensation owing to employees at the written request of such employees. Under the conference agreement the proviso does not preclude the Administrator from joining in a single complaint causes of action arising under section 16(c) and section 17. Nor is it intended that if the Administrator brings an action under section 16(c) he is thereby precluded from bringing an action under section 17 to restrain violations of the act. Similarly, the bringing of an injunction action under section 17 will not preclude the Administrator from also bringing in an appropriate case an action under section 16(c) to collect unpaid minimum wages or overtime compensation owing to employees under the provisions of the law. Nor is the provision intended in any way to affect the court's authority in contempt proceedings for enforcement of injunctions issued under section 17 for violations occurring subsequent to the issuance of such injunctions. The provision, however, will have the effect of reversing such decisions as McComb v. Scerbo ((C.C.A. 2) 17 Labor Cases No. 65, 297), in which the court included a restitution order in an injunction decree granted under section 17." U.S. Code Congressional Service, 1949, p. 2273.

Mitchell v. *Floyd Pappin & Son*, D. C. Mont. 1954, 122 F. Supp. 755. Section 17 denies to the courts any power to order payment of minimum wages and overtime to employees in the Secretary's suit to enjoin violations of Section 15. The Congress could have given but did not give to the Secretary and cause of action to sue for restitution on behalf of wrongfully discharged employees. Are we to assume, absent any expression in congressional enactment or legislative history, that Congress intended by implication to give the Secretary acting on behalf of the United States, such a cause of action? We think not.

The Secretary has expressed a doubt that a wrongfully discharged employee has a cause of action, enforce-
23 able in a Federal Court, to recover for losses resulting from a wrongful discharge. The Second Circuit Court of Appeals has held, in a case arising before the 1949 amendment, that the employee had no right which he could assert in a Federal forum.[4] We do not feel any necessity for deciding whether or not the employee has a cause of action. If he has, then without congressional authority the Federal Courts cannot, at the suit of the Secretary, enforce his cause of action. The employee would be the real party in interest. Cf. Rule 17(a) Fed. Rules Civ. Proc., 28 U.S.C.A. If the Secretary is seeking to enforce, on behalf of the United States or in his own right as Secretary, a cause of action vested in him, we must look for a congressional enactment which creates the cause of action. The right of the Secretary to seek and the power of the court to grant the relief which was denied by the district court must be expressly conferred by an act of Congress or be necessarily implied from a congressional enactment.

The effect of the amendment to Section 17 was the subject of an interesting comment arguendo in an opinion of the Ninth Circuit Court of Appeals where it was said:

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[4] "The dismissal of the second count was also necessary and proper since the Fair Labor Standards Act, supra, confers no jurisdiction upon the court over a civil action to recover damages for the discharge of an employee in violation of the statute. Such action must be redressed, if at all, by criminal proceedings in conformity with § 15(a)(3) of the Act." Bonner v. Elizabeth Arden, Inc., 2nd Cir. 1949, 177 F. 2d 703.

"An attempt by the Administrator of the Wage and Hour Division to assert the power of collecting restitution was supported by various courts improvidently. [Citing McComb v. Scerbo and Walling v. O'Grady]. The Congress rebuked this attempt and in effect repealed the supporting decisions by amending the basic act expressly to forbid collection of restitution by the agency." *United States* v. *Parkinson*, 9th Cir. 1956, 240 F. 2d 918.

The report of the Conference Committee, *supra*, stated that the amendment to Section 17 was not intended "to affect the court's authority in contempt proceedings for enforcement of injunctions issued under section 17 for violations *occurring subsequent to the issuance of such injunctions.*" (Emphasis supplied.) This suggests that there was no power to grant restitution for violations occurring prior to the issuance of an injunction. It was the apparent intent of Congress, in passing the 1949 amendment to Section 17, that it "will have the effect of reversing such decisions as *McComb* v. *Scerbo* * * * in which the court included a restitution order in an injunction decree granted under section 17." The O'Grady case is not "such a case" as the Scerbo case in that Scerbo deals with overtime wages while O'Grady involved loss of wages due to a wrongful discharge. But the reasons for the decision in Scerbo are those announced in O'Grady, and the authority of O'Grady was, we think, the primary precedent relied upon in Scerbo. To that extent O'Grady was one, and perhaps the only one from an appellate court, of "such decisions as *McComb* v. *Scerbo.*" The O'Grady case was one "in which the court included a restitution order in an injunction decree granted under section 17," and in that respect the O'Grady case was one "of such decisions as *McComb* v. *Scerbo*". But the proviso added to Section 17 by the 1949 amendment dealt soley with the minimum wage and overtime compensation provisions. Without expressly holding, therefore, because we find it unnecessary to do so, that the Congress intended, by the amendment, to expressly repudiate the doctrine of the O'Grady case although the report of the Committee points strongly in

that direction, we have no hesitancy in saying that the reliance in the O'Grady case on the cases cited by it was misplaced and that we do not regard that decision as authoritative.

If the district courts have the authority to direct restitution to employees who have been wrongfully discharged in connection with an injunction directing reinstatement, such authority exists, we think, as an equitable power granted by implication as necessarily being an incident of ancillary to the judicial power expressly conferred by the congressional act. The Secretary places reliances upon *Porter* v. *Warner Co.*, 328 U. S. 395, 66 S. Ct. 1086, 90 L. Ed. 1332. There the Administrator under the Emergency Price Control Act, 56 Stat. 23, brought a suit to enjoin the collection of rents in excess of the permitted maximum, and to require the defendant property owner to tender to his tenants the excess rents he had collected. The Act gave tenants a cause of action for treble damages. The courts were authorized, upon application of the Administrator to grant "a permanent or temporary injunction, restraining order, or other order." The Supreme Court found that district courts could enter orders directing restitution. It quoted from a Senate Committee report a statement that the "courts are
26 given jurisdiction to issue whatever order to enforce compliance is proper in the circumstances of each particular case." This, said the Supreme Court, "is an unmistakable acknowledgment that courts of equity are free to act under § 205(a)[5] in such way as to be most responsive to the statutory policy of preventing inflation", 328 U. S. 401. Thus it appears that by authorizing the entry of an "other order", a broad general power to grant equitable relief was conferred by Congress. The

[5] "Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provisions of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction restraining order, or other order shall be granted without bond." 56 Stat. 23, 33.

general equitable power, said the Supreme Court, is not to be denied unless the statute expressly or by a necessary inference restricts the court's jurisdiction in equity. Of the Price Control Act, and the Porter decision construing it, the Ninth Circuit Court of Appeals has observed:

> "The courts construed certain language of the Price Control Act to compel mandatory restitution. But this legislation was passed and interpreted in time of a struggle for national existence. These laws are now in abeyance and they constitute a doubtful precedent for the extension of enactments such as this which are intended to represent permanent policy in peaceful times as well." *United States* v. *Parkinson, supra.*

27 The excess rentals collected were moneys received by the landlord in violation of the express provisions of a statute or a Regulation issued pursuant to it. The situation is not unlike that of the employer in a contempt case who, in violation of a court order, prospective in its effect when entered, retains funds which belong to his employees. Here the right of recovery, if any right there be, is that of the wrongfully discharged employee to recover damages for the wrong done to him. No right to recover damages in such a case has been given to him or to the Secretary for him by the statute, nor does the statute contain language which indicates a recognition of any such right. There is, as has been indicated, a judicial determination denying the existence of any such right in the employee. We are unable to find or infer any intent of the Congress that the courts should have power, as an incident to an order directing reinstatement of discharged employees, to direct the payment of the damages resulting from the loss of wages. The meagre indications of congressional purposes which we are able to glean from the Act and from the Committee Report indicate a contrary intent. In any event, we conclude that the doctrine stated in the O'Grady case, for which the Secretary here contends, is not expressive of the present state of the law.

The district court refrained from deciding whether it was authorized to require restitution of wages lost by the discharged employees "inasmuch as in the exercise of the court's discretion such reimbursement would not be

ordered even assuming, without deciding, that the court would have jurisdiction to order such reimburse-
28 ment". If we had decided that the court was authorized to grant the relief of awarding the loss of wages damage to the employees it would have been necessary to review more of the record than is before us in order to determine whether or not there was an abuse of discretion in denying the relief sought. This question is not reached.

The appellee, subsequent to the argument of this appeal has suggested that the district court was without power to issue an injunction directing the reinstatement of the employees who were wrongfully discharged. The suggestion is without merit.

The decree of the district court is

AFFIRMED.

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29 IN UNITED STATES COURT OF APPEALS

No. 17068

JAMES P. MITCHELL, Secretary of Labor,
United States Department of Labor,

versus

ROBERT DEMARIO JEWELRY, INC., and
ROBERT DEMARIO, an individual.

Judgment—November 7, 1958

This cause came on to be heard on the transcript of the record from the United States District Court for the Middle District of Georgia, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the decree of the said District Court in this cause be, and the same is hereby, affirmed.

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30 Clerk's Certificate to foregoing transcript omitted in printing

Plaintiff's Exhibit 63

32

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

UNITED STATES OF AMERICA

v.

ROBERT DEMARIO JEWELRY, INC., a Georgia Corporation; ROBERT DEMARIO; and LARRY BROWN

CRIMINAL INFORMATION

VIO: Title 29, Secs. 215(a)(1), 215(a)(2) and 215(a)(5)

OFFENSES:

1. Failure to pay minimum wage
   (Section 215(a)(2))
   (Count I)

2. Failure to pay overtime compensation
   (Section 215(a)(2))
   (Count II)

3. Falsification of Records
   (Section 215(a)(5))
   (Count III)

4. Failure to keep records
   (Section 211(c))
   (Count IV)

5. Shipment of goods
   (Section 215(a)(1))
   (Count V)

33 UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

No. 4482
(29 U.S.C. 201, et seq.)

UNITED STATES OF AMERICA

v.

ROBERT DEMARIO JEWELRY, INC., a Georgia Corporation; ROBERT DEMARIO; and LARRY BROWN

THE UNITED STATES ATTORNEY CHARGES:

COUNT I

(U.S.C., Title 29, Secs. 215(a)(2) and 216(a))

Defendants, Robert DeMario Jewelry, Inc., a Georgia corporation, Robert DeMario, and Larry Brown, employers within the meaning of the Fair Labor Standards Act of 1938, as amended, did, within the period beginning March 26, 1954, and ending March 26, 1956, at Ft. Gaines, Georgia, within the Middle District of Georgia and within the jurisdiction of this court, unlawfully and wilfully pay to their employees Mary Aldrich, Jo Bruner, Betty Bryan, Mrs. G. W. Crapps, Wilma Dews, Jeanette Fouche, Nadine Gashaw, Maybelle Giles, Dorothy Ann Hardwick, Carolyn Hartley, Marion King, Fannie Mae Martin, Paralee Pate, and Mrs. Odis Rejko, each of whom was engaged in the production of goods for commerce, wages at rates less than seventy-five (75) cents per hour up to March 1, 1956, and wages at rates less than $1.00 an hour thereafter, contrary to the Act referred to above (U.S.C., Title 29, Secs. 206 and 215(a)(2)).

COUNT II

(U.S.C., Title 29, Secs. 215(a)(2) and 216(a))

Defendants, Robert DeMario Jewelry, Inc., a Georgia Corporation, Robert DeMario, and Larry Brown, employers within the meaning of the Fair Labor Standards Act of 1938, as amended, did, within the period beginning March 26, 1954 and ending March 26, 1956, at Ft. Gaines,

Georgia, within the Middle District of Georgia and within the jurisdiction of this court, unlawfully and wilfully employ Jo Bruner, Betty Bryan, Mrs. G. W. Crapps, Wilma Dews, Nadine Gashaw, Carolyn Hartley and Fannie
34 Mae Martin, in the production of goods for commerce for workweeks longer than forty hours without paying such employees compensation for the hours in excess of forty at a rate not less than one and one-half times the regular rate at which such employees were employed, contrary to the Act referred to above (U.S.C., Title 29, Secs. 207 and 215(a)(2)).

COUNT III

(U.S.C., Title 29, Secs. 215(a)(5) and 216(a))

Defendants, Robert DeMario Jewelry, Inc., a Georgia Corporation, Robert DeMario, and Larry Brown, employers within the meaning of the Fair Labor Standards Act of 1938, did, within the period beginning March 26, 1954 and ending March 26, 1956, at Ft. Gaines, Georgia, within the Middle District of Georgia and within the jurisdiction of this court, unlawfully and wilfully make, and cause to be made, records showing the hours purported to have been worked during many workweeks by their employees Mary Aldrich, Jo Bruner, Betty Bryan, Mrs. G. W. Crapps, Wilma Dews, Jeanette Fouche, Nadine Gashaw, Maybelle Giles, Dorothy Ann Hardwick, Carolyn Hartley, Marion King, Fannie Mae Martin, Paralee Pate, and Mrs. Odis Rejko, who were, in such workweeks, employed by the defendants in the production of goods for commerce and subject to the provisions of Sections 6 and 7 of the Fair Labor Standards Act of 1938, as amended, (U.S.C., Title 29, Secs. 206 and 207), which records were required to be kept by Section 11(c) of said Act (U.S.C., Title 29, Sec. 211(c)) and the Regulations duly promulgated thereunder (Code of Federal Regulations, Title 29, Chapter V, Part 516), knowing such records to be false in a material respect in that said records set forth a lesser number of hours than those actually worked by such employees, during said workweeks, contrary to the Act referred to above (U.S.C., Title 29, Sec. 215(a)(5)).

COUNT IV

(U.S.C., Title 29, Secs. 215(a)(5) and 216(a))

Within the period beginning March 26, 1954 and ending March 26, 1956, defendants Robert DeMario Jewelry, Inc., a Georgia Corporation, Robert DeMario and Larry Brown, employers within the meaning of the Fair Labor Standards Act of 1938, as amended, did, at Ft. Gaines, Georgia, within the Middle District of Georgia and within the jurisdiction of this court wilfully and unlawfully fail to make, keep and preserve a record showing the hours worked each workday and each workweek by their employees, including homeworkers, who were engaged in the production of goods for commerce, and who were, during the said period, subject to Sections 6 and 7 of the Fair Labor Standards Act of 1938, as amended, (U.S.C., Title 29, Secs. 206 and 207), which record is required to be kept pursuant to Section 11(c) of said Act (U.S.C., Title 29, Sec. 211(c)) and the Regulations duly promulgated thereunder (Code of Federal Regulations, Title 29, Chapter V, Part 516), contrary to the Act referred to above (U.S.C., Title 29, Sec. 215(a)(5)).

COUNT V

(U.S.C., Title 29, Secs. 215(a)(1) and 216(a))

Within the period beginning March 26, 1954, and ending March 26, 1956, in the Middle District of Georgia and within the jurisdiction of this court, defendants Robert DeMario Jewelry, Inc., a Georgia Corporation, Robert DeMario and Larry Brown during many workweeks, unlawfully and wilfully transported, shipped, delivered, and sold in commerce from the State of Georgia to points outside that State goods in the production of which employees were employed in violation of Sections 6 and 7 of the Fair Labor Standards Act of 1938, as amended, (U.S.C., Title 29, Secs. 206 and 207), in that they were employed by defendants in the production of goods for commerce at rates of pay less than seventy-five (75) cents per hour up to March 1, 1956 and at rates of pay less than $1.00 per hour thereafter, and during each of various workweeks for more than forty hours per workweek without receiv-

ing compensation for their employment for the hours in excess of forty per workweek at a rate not less than one and one-half times the regular rates at which they were employed, contrary to Said Act (U.S.C., Title 29, Sec. 215(a)(1)).

FRANK O. EVANS
United States Attorney

By JOSEPH H. DAVIS
Assistant United States Attorney

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36 No. 4482

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF GEORGIA

UNITED STATES OF AMERICA

v.

ROBERT DEMARIO JEWELRY, INC., ROBERT DEMARIO
LARRY BROWN

29 USC 215(a)(1), 215(a)(2) and 215(a)(5)

Filed July 24, 1956

JOHN P. COWART, *Clerk.*
By H. OKAY PARKER, *Deputy.*

PLEA

I, ROBERT DEMARIO JEWELRY, INC., having been advised of my Constitutional rights, and having had the charges herein stated to me, plead guilty In Open Court, this 14th day of November, 1956.

STONE & STONE
Attorney for Appellants.

PLEA

I, ROBERT DEMARIO, having been advised of my Constitutional rights, and having had the charges herein stated to me, plead guilty In Open Court, this 14th day of November, 1956.

STONE & STONE
Attorney for Appellants

Plea

I, Larry Brown having been advised of my Constitutional rights, and having had the charges herein stated to me, plead guilty In Open Court, this 14th day of November, 1956.

Stone & Stone
Attorney for Appellants

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37 CERTIFIED COPY D. C. FORM NO. 30

United States of America }
Middle District of Georgia } ss:

I, John P. Cowart, Clerk of the United States District Court in and for the Middle District of Georgia, do hereby certify that the annexed and foregoing is a true and full copy of the original

Criminal Information in the case of:

United States of America

v.

Robert DeMario Jewelry, Inc., a Georgia Corporation; Robert DeMario; and Larry Brown

now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Macon, Georgia this 14th day of November, A. D. 1956

John P. Cowart, *Clerk.*
By Betty M. Jones, *Deputy Clerk.*

(SEAL)

38 DISTRICT COURT OF THE UNITED STATES
MIDDLE DISTRICT OF GEORGIA

COLUMBUS DIVISION

CRIMINAL No. 4482

VIO: 29 USC 201, et seq.

UNITED STATES OF AMERICA

v.

ROBERT DEMARIO JEWELRY, INC., a Georgia Corporation

SENTENCE

The defendant having pleaded guilty, and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court, and the Court having adjudged the defendant guilty as charged and convicted,

WHEREUPON IT IS CONSIDERED, ORDERED and ADJUDGED by the Court that the defendant, ROBERT DEMARIO JEWELRY, INC. now present in Court, shall pay a fine to the United States of America in the sum of FORTY-FIVE HUNDRED ($4500.00) Dollars; said fine to be collected by execution if not paid within 60 days from this date,

In Open Court, this the 14th day of November, 1956.

T. HOYT DAVIS
T. Hoyt Davis,
United States Judge

At Macon, Georgia.

39 DISTRICT COURT OF THE UNITED STATES
MIDDLE DISTRICT OF GEORGIA

COLUMBUS DIVISION

CRIMINAL No. 4482

VIO: 29 USC 201, et seq.

UNITED STATES OF AMERICA

v.

ROBERT DEMARIO

SENTENCE

The defendant having pleaded guilty, and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court, and the Court having adjudged the defendant gulity as charged and convicted,

WHEREUPON IT IS CONSIDERED, ORDERED and ADJUDGED by the Court that the defendant, ROBERT DEMARIO now present in Court, shall pay a fine to the United States of America in the sum of FOUR HUNDRED ($400.00) Dollars.

In Open Court, this the 14th day of November, 1956.

T. HOYT DAVIS
T. Hoyt Davis,
United States Judge

At Macon, Georgia.

40 DISTRICT COURT OF THE UNITED STATES
MIDDLE DISTRICT OF GEORGIA

COLUMBUS DIVISION

CRIMINAL NO. 4482

VIO: 29 USC 201, et seq.

UNITED STATES OF AMERICA

v.

LARRY BROWN

SENTENCE

The defendant having pleaded guilty, and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court, and the Court having adjudged the defendant guilty as charged and convicted,

WHEREUPON IT IS CONSIDERED, ORDERED and ADJUDGED by the Court that the defendant, LARRY BROWN now present in Court, shall pay a fine to the United States of America in the sum of ONE HUNDRED ($100.00) Dollars.

In Open Court, this the 14th day of November, 1956.

T. HOYT DAVIS
T. Hoyt Davis,
United States Judge

At Macon, Georgia.

41 SUPREME COURT OF THE UNITED STATES

No.

OCTOBER TERM, 1958

JAMES P. MITCHELL, Secretary of Labor, United States Department of Labor, *Petitioner*,

v.

ROBERT DEMARIO JEWELRY, INC., and ROBERT DEMARIO

Order Extending Time to File Petition for Writ of Certiorari—January 23, 1959

UPON CONSIDERATION of the application of counsel for petitioner,

IT IS ORDERED that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including

March 6th, 1959.

Hugo L.

~~HUGO~~ T. BLACK
Associate Justice of the Supreme Court of the United States.

Dated this 23d
day of January, 1959

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42 SUPREME COURT OF THE UNITED STATES

No. 746

October Term, 1958

(Title omitted)

Order Allowing Certiorari—April 20, 1959

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted. The case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE 1959—508910/P.O. 1561